

ORIGINAL



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W-01384A-11-0243, W-20809A-11-0243,
W-02065A-11-0246 and W-20809A-11-0246

A G R E E M E N T

THIS AGREEMENT, dated this 6th day of June, 1984,
by and between WALDEN MEADOWS COMMUNITY COOP ("Walden") and
WILHOIT WATER COMPANY ("Wilhoit"). In consideration of the
mutual promises, covenants and agreements set forth herein,
the parties hereto agree as follows: &

1. Walden will sell water to Wilhoit at a maximum rate
of delivery of two hundred thousand (200,000) gallons per month;
provided, however, that Wilhoit shall use its best efforts to
pump from its own sources and to refrain from drawing such
water from Walden under this Agreement and Wilhoit shall util-
ize such water only as required to furnish water needs on a
supplementary basis on the Wilhoit system.

2. Wilhoit will bear all costs and expenses associated
with installing the water delivery system necessary to accom-
plish this delivery of water, including the installation of a
meter (and such meter shall, if practicable, automatically dis-
continue water deliveries each month once the two hundred thous-
and (200,000) gallon per month limit has been reached) and the
installation of a valve that does not allow water from the
Wilhoit system to mix with the water from the Walden system.
The parties agree that Don Wigal, engineer for Walden, will
supervise the installation of the facilities required to inter-
connect the systems at the Summit tank and Wilhoit agrees to

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pay any such engineering and supervision fees directly related to the installation of these facilities. Wilhoit agrees to advance Five Hundred Dollars (\$500.00) to Don Wigal immediately after execution of this Agreement.

3. Walden presently has pending before the Arizona Corporation Commission a request for a rate increase. Once permanent rates are fixed by the Commission in response to that request, Wilhoit agrees to pay to Walden, retroactive to the date of this Agreement, Twenty Dollars (\$20.00) for the first two thousand (2,000) gallons and Four Dollars (\$4.00) per one thousand (1,000) gallons thereafter; provided, however, that if the Arizona Corporation Commission establishes a lesser commercial rate, Wilhoit will pay such rate. In the meantime (i.e., pending the establishment of new permanent rates), Wilhoit will pay, on Walden's regular billing cycle, the rates for water delivery presently on file with the Arizona Corporation Commission. The difference between the charges based on the rates presently on file and the agreed-upon charges based on the new permanent rates shall be paid by Wilhoit once the new permanent rates are established.

4. Wilhoit agrees to reimburse Walden in the amount of \$2,000.00 for its attorneys' fees incurred in relation to the negotiation and drafting of this Agreement.

5. The parties agree and understand that Wilhoit presently faces an emergency on its water delivery system in that its existing wells are insufficient to meet demand. The parties agree that they will use their best efforts to insure the most

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rapid installation of the water delivery system and will do all things necessary as contemplated under this Agreement to provide water to Wilhoit as promptly as possible.

6. The parties agree that the sale of water is subject to the availability to Walden of water in excess of its current customers' requirements. Accordingly, in the event Walden determines at any time that its water availability is inadequate to furnish Wilhoit, Walden may discontinue the furnishing of water to Wilhoit ten (10) days after receipt by Wilhoit of a written notification to that effect.

7. This Agreement is subject to the jurisdiction of the Arizona Corporation Commission. In that regard, Walden's tariff provisions and the applicable rules and regulations of the Arizona Corporation Commission shall govern, except insofar as any of such provisions or rules and regulations are inconsistent with any of the expressed terms of this Agreement.

WILHOIT WATER COMPANY

By [Signature]
its Vice-President

WALDEN MEADOWS COMMUNITY COOP

By [Signature]
its President

AGREEMENT

This Agreement, dated this 28th day of May, 1986, by and between WALDEN MEADOWS COMMUNITY COOP ("Walden") and WILHOIT WATER COMPANY ("Wilhoit"). In consideration of the mutual promises, covenants and agreements set forth herein, the parties agree as follows:

1. This Agreement modifies the Agreement between the parties dated June 6, 1984, but only as to the particulars set forth herein. All other provisions of the June 6, 1984 Agreement remain in full force and effect and are unamended hereby.

2. In modification of paragraph 1 of the June 6, 1984, Agreement, Walden agrees to sell water to Wilhoit at a maximum rate of delivery of 400,000 gallons per month; provided, however, that in the event of an emergency water shortage on the Wilhoit system that Walden will upon request positively consider additional deliveries to Wilhoit subject to the limitations of its own water system needs.

3. Wilhoit will make every effort to repair the existing meter which measures water deliveries from the Walden to Wilhoit system or, if the meter cannot be repaired, will replace the existing meter at Wilhoit's expense. ^{The existing meter must be either repaired or replaced by June 30, 1986. If not completed, water deliveries will be discontinued on this date.}

4. In the event that the diesel electric plant or the pump associated with the Walden well should require repair, the parties hereto agree to share in the expense of the repair of either the diesel electric plant or pump. In the event of mechanical breakdown, costs will be shared by Walden and Wilhoit by examination of the preceding twelve months usage factors. Based upon usage in the preceding twelve months by both Walden and Wilhoit, a fraction will be developed which will dictate the parties' pro rata sharing of repair costs. For example, if in the twelve months immediately preceding the breakdown,

35

Wilhoit has used one million gallons and total pumpage from the well has been five million gallons, then Wilhoit's share of the repair costs would be one-fifth or twenty percent.

WILHOIT WATER COMPANY

By

Its

WALDEN MEADOWS COMMUNITY COOP

By

Its

President



Memorandum

Date: April 10, 2012

To: Dorothy Hains, Arizona Corporation Commission

From: Vivian Burns, Arizona Department of Environmental Quality, Case Manager Water Quality Enforcement Unit

Subject: Consent Order DW-128-06 – Wilhoit Water Co / Yavapai Estates Public Water System #13-077

The Arizona Department of Environmental Quality (ADEQ) issued Wilhoit Water Co – Yavapai Estates (Wilhoit) PWS #13-077 a Compliance Order on December 20, 2006 for arsenic exceedances ranging from 170 ppb to 361 ppb (the arsenic maximum contaminant level is 10 ppb). Wilhoit appealed the Compliance Order, but finally agreed to the compliance condition to supply customers with water obtained from the City of Prescott until arsenic treatment was installed, and to install arsenic treatment. Arsenic treatment was to be installed by December 12, 2007 or Wilhoit would pay a penalty, but Wilhoit suffered an administrative tragedy, and ADEQ agreed to extend the completion date by a couple of months. Wilhoit completed the arsenic treatment installation and received their Approval of Construction (AOC) on February 26, 2008. Unfortunately, the arsenic treatment system didn't work and Wilhoit again reached out to the City of Prescott to provide water service to their customers. Wilhoit abandoned the non-working treatment system, and received an Approval to Construct for a new arsenic treatment system on August 18, 2010. The treatment system was installed, and ADEQ issued an AOC for the new arsenic treatment system on April 12, 2011. Wilhoit has completed the required four quarters of arsenic monitoring with average readings of 0.0037 mg/l. ADEQ is in the process of closing Compliance Order DW-128-06.



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • azdeq.gov



Henry R. Darwin
Director

APPROVAL OF CONSTRUCTION

Project Description: Yavapai Estates Arsenic Treatment System. AOC Permit for 1-Siemens Waterboy Model WB-82 Coagulation/Filtration Arsenic Treatment System with all necessary Components. To replace Existing Absorptive Media Treatment System.

Location: Chino Valley, AZ

Project Owner: Wilhoit Water Company, c/o Mr. Jim West
Address: 365 E. Coronado Road, Suite 200, Phoenix, AZ 85005

The Arizona Department of Environmental Quality (ADEQ) hereby issues an Approval of Construction for the above-described facility based on the following provisions of Arizona Administrative Code (A.A.C.) R18-5-507 et seq.

On August 18, 2010, ADEQ issued a Certificate of Approval to Construct for the referenced project.

On March 30, 2011 Robert D. Upton, P.E., certified the following:

- A final construction inspection was conducted on March 23, 2011;
- The referenced project was constructed according to the as-built plans and specifications and ADEQ's Certificate of Approval to Construct;
- Water system pressure and leakage tests were conducted on March 7, 2011, and the results were within the allowable leakage rates;
- The water storage system was disinfected according to an ADEQ-approved method; and
- The applicant has the right to appeal this AOC Permit. Appeal information is on reverse side of this Permit.

Microbiological samples were collected on March 9, 2011 and analyzed on March 10, 2011 by Bradshaw Mountain Environmental Laboratory, ADHS License No. AZ0029. The sample results were negative for total coliform.

This Approval of Construction authorizes the owner to begin operating the above-described facilities as represented in the approved plan on file with the ADEQ. Be advised that A.A.C. R18-5-124 requires the owner of a public water system to maintain and operate all water production, treatment and distribution facilities in accordance with ADEQ Safe Drinking Water Rules.

FMS

PWS No.: 13-077
LTF No.: 54004

Janak K. Desai
Janak K. Desai, P.E., Manager
Drinking Water Facilities Review Unit
Drinking Water Section

4/12/2011
Date Approved

c: TEU File No.: 20100154
CRO Approval of Construction File
Yavapai County Health Department
Yavapai County Planning & Zoning Department
AZ Corporation Commission
Engineer

Northern Regional Office
1801 W. Route 66 • Suite 117 • Flagstaff, AZ
86001
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ
85701
(520) 628-6733



BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

) COMPLIANCE ORDER

) Wilhoit Water Company-Yavapai Estates
) Located in or near Chino Valley, Yavapai
) County, Arizona

) Docket No. DW-128-06

) Public Water System (PWS) 13-077

) Case ID #76988

To: The Wilhoit Water Company, Inc. in its capacity as owner and/or operator of Wilhoit Water Company – Yavapai Estates ("the Water Supplier") a public water system located in or near Chino Valley, Yavapai County, Arizona.

RECITALS

The Director of the Arizona Department of Environmental Quality ("ADEQ") has determined that Water Supplier is in violation of the Arizona Revised Statutes ("A.R.S.") or the rules adopted pursuant to the A.R.S. As a result, the Director is issuing this Order requiring compliance within a reasonable as described below.

I. AUTHORITY

The Director is authorized to issue this Order pursuant to A.R.S. § 49-354.

II. NATURE OF VIOLATION(S)

The Director has reason to believe that the Water Supplier has violated the following provisions set forth in the A.R.S., or the Arizona Administrative Code (A.A.C.):

A. A.A.C. R18-4-205 Distribution of water in excess of the Maximum Contaminant Level (MCL) for an inorganic chemical.

The arsenic sample collected under the Monitoring Assistance Program (MAP) on March 23, 2005 yielded a result of 230 parts per billion (ppb) and an arsenic sample collected on June 28, 2005 yielded a result of 170 ppb. A sample collected by ADEQ on October 23, 2006

1 ORIGINAL of the foregoing Compliance Order was sent certified mail, return receipt requested,
this 20th day of December, 2006 to:

2 Robert D. Conlin, Statutory Agent, President/CEO
3 The Wilhoit Water Company, Inc.
4 P.O. Box 870
Clarkdale, AZ 86324-0870

5 COPY of the foregoing Compliance Order was filed this 20th day of December, 2006, with:

6 Arizona Department of Environmental Quality
7 Office of Special Counsel
8 Attention: Judith Fought, Hearing Administrator
1110 West Washington Street
Phoenix, Arizona 85007-2935

9 COPIES of the foregoing Compliance Order were sent by regular/interdepartmental mail, this
day of Dec, 2006 to the following:

10 Tamara Huddleston, Chief Counsel
11 Environmental Enforcement Section
Office of the Attorney General

12 Robert Casey, Manager, WQEU, ADEQ

13 Yavapai County Department of Health

14 Arizona Corporation Commission Utilities Division

15 Patrick Chan, EES - WTR-6
16 U.S. EPA Region IX
75 Hawthorne Street
17 San Francisco, California 94105

18 Linda Cunningham, Operator
Wilhoit Water System - Yavapai Estates
19 474 Hidden Valley Road
Prescott, Arizona 86324

1 confirmed an arsenic concentration of 316 ppb. The maximum contaminant level (MCL) for
2 arsenic was 50 ppb until January 23, 2006. As of January 23, 2006, the applicable arsenic MCL
3 in Arizona is 10 ppb.

4 **B. A.A.C. R18-4-105(E) Failure to provide Level 1 (30 day) Public**
5 **Notice**

6 The Water Supplier has failed to provide public notice of its failure to comply with the
7 applicable arsenic MCL.

8 **III. TIME FOR COMPLIANCE**

9 **IT IS ORDERED** that the Water Supplier achieve compliance by taking the specific actions set
10 forth below:

11 A. Within 5 calendar days of the effective date of this Order, the Water Supplier
12 shall submit public notice directly, by U.S. Mail, to all customers of the Water Supplier as
13 required by A.A.C. R18-4-105 and submit a copy of the notice to ADEQ. The Water Supplier
14 shall issue repeat public notices as required by A.A.C. R18-4-105(E)(2)(c).

15 B. Within 3 calendar days of the effective date of this Order and until the Water
16 Supplier has demonstrated to ADEQ's written satisfaction that the Water Supplier is able to meet
17 the applicable MCL for arsenic, the Water Supplier shall provide, door-to-door, bottled water to
18 all customers of the Water Supplier, and on a weekly basis submit documentation to ADEQ that
19 demonstrates bottled water is being provided by the Water Supplier to all customers of the Water
20 Supplier in accordance with A.A.C. R18-4-223.

21 C. Within 30 calendar days of the effective date of this Order, the Water Supplier
22 shall submit to ADEQ a written proposal to implement best available technology to achieve
23 compliance with the arsenic MCL in accordance with A.A.C. R18-4-220. The proposal must
24 include a detailed compliance schedule of best available technology to be fully implemented no
25 later than June 1, 2007, a funding method to implement the best available technology, and a

1 proposal to supply alternate sources of drinking water to the customers of the Water Supplier
2 during the interim prior to implementation of the best available technology. The proposal, under
3 this subsection, to supply alternate sources of drinking water may include provision of bottled
4 water, point-of-use treatment devices, point-of-entry treatment devices or other methods
5 approved by ADEQ to avoid an unreasonable risk to public health.

6 D. No later than June 1, 2007, the Water Supplier shall implement best available
7 technology to achieve compliance with the arsenic MCL of 10 ppb.

8 **IV. RIGHT TO HEARING AND INFORMAL SETTLEMENT CONFERENCE**

9 A. The Water Supplier has a right to a hearing before an administrative law judge to
10 contest this Order, provided that a notice of appeal or request for hearing is made within thirty
11 (30) calendar days of receipt of this Order. A notice of appeal or request for hearing must be in
12 writing and must specifically identify those portions of this Order which are contested.

13 B. The Water Supplier has a right to request an informal settlement conference
14 pursuant to A.R.S. § 41-1092.06, provided there has been a timely request for hearing. A request
15 for an informal settlement conference must be filed with ADEQ no later than twenty (20)
16 calendar days before the hearing.

17 C. All notices of appeal, requests for hearing, and requests for an informal settlement
18 conference must be submitted to ADEQ in writing at the following address:

19 Arizona Department of Environmental Quality
20 Office of Administrative Counsel
21 Attention: Judith Fought, Hearing Administrator
1110 West Washington Street
Phoenix, Arizona 85007-2935

22 **V. ENFORCEMENT OF ORDER**

23 This Order becomes final and enforceable in Superior Court within thirty (30) calendar days of
24 receipt, unless a hearing is properly requested as set forth above. As a result, the effective date
25 of this Order is thirty (30) calendar days from the date of receipt, or if this Order is appealed as

1 set forth above, the date that the Water Supplier receives the Director's final decision on the
2 appeal.

3 **VI. CORRESPONDENCE**

4 All invoices, photographs, logs, laboratory analyses, sealed engineering plans, technical
5 drawings, permits or any other document(s) necessary to establish compliance or required by this

6 Order must be mailed or hand delivered to the following address:

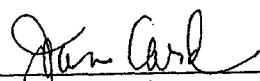
7 Arizona Department of Environmental Quality
8 Water Quality Division
9 Attention: Cynthia Campbell, Manager
10 Compliance Section
11 1110 West Washington Street
12 Phoenix, Arizona 85007-2935
13 Telephone: 602-771-2209
14 Email: Campbell.Cynthia@azdeq.gov

15 Any such correspondence shall be deemed submitted when received by the ADEQ at the above
16 address.

17 **VII. RESERVATION OF RIGHTS**

18 By issuing this Order the Arizona Department of Environmental Quality does not waive its right
19 to seek appropriate administrative penalties, civil judicial penalties or injunctive relief in
20 Superior Court for violations of the Arizona Revised Statutes, or any rule, permit or order
21 promulgated or issued thereunder, or any other applicable environmental statute or legal
22 authority.

23 **ISSUED** this 20th day of December, 2006.

24 
25 Joan Card, Director
Water Quality Division
Arizona Department of Environmental Quality

1 ORIGINAL of the foregoing Compliance Order was sent certified mail, return receipt requested,
2 this 20th day of December, 2006 to:

3 Robert D. Conlin, Statutory Agent, President/CEO
4 The Wilhoit Water Company, Inc.
5 P.O. Box 870
6 Clarkdale, AZ 86324-0870

7 COPY of the foregoing Compliance Order was filed this 20th day of December, 2006 with:

8 Arizona Department of Environmental Quality
9 Office of Special Counsel
10 Attention: Judith Fought, Hearing Administrator
11 1110 West Washington Street
12 Phoenix, Arizona 85007-2935

13 COPIES of the foregoing Compliance Order were sent by regular/interdepartmental mail, this
14 day of Dec, 2006 to the following:

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16 Environmental Enforcement Section
17 Office of the Attorney General

18 Robert Casey, Manager, WQEU, ADEQ

19 Yavapai County Department of Health

20 Arizona Corporation Commission Utilities Division

21 Patrick Chan, EES - WTR-6
22 U.S. EPA Region IX
23 75 Hawthorne Street
24 San Francisco, California 94105

25 Linda Cunningham, Operator
Wilhoit Water System - Yavapai Estates
474 Hidden Valley Road
Prescott, Arizona 86324

1 BEFORE THE DIRECTOR OF THE
2 DEPARTMENT OF ENVIRONMENTAL QUALITY

3 In the matter of:

4 **WILHOIT WATER COMPANY**

5 Yavapai Estates

6 Located in or near Chino Valley,

7 Yavapai County, Arizona

8 PWS ID# 13-077

9 Case ID# 76988

No. 06A-DW128-DEQ

FINAL DECISION AND ORDER AND
ORDER OF DISMISSAL

10 **Disposition of the Recommended Decision of the Administrative Law Judge**

11 The Director has reviewed the Administrative Law Judge Order of March 9, 2007 (ALJ) and the
12 record in this matter. The ALJ ordered vacating the hearing and further ordered this appeal
13 remanded to the Director of ADEQ with the recommendation that it be dismissed according to
14 the terms of the parties' settlement reached during the March 9, 2007 hearing, the terms of which
15 are set forth in the record, and restated below.

16 The Director accepts the recommendations of the ALJ.

17 **ORDER**

18 This Order embodies the stipulations reached during the hearing on March 9, 2007 by the
19 parties concerning Compliance Order DW-128-06.

20 1. The violations alleged in Paragraph IIA of the Compliance Order are admitted by
21 Wilhoit Water Company.

22 2. The violations alleged in Paragraph IIB of the Compliance Order are admitted by
23 Wilhoit Water Company.

24 3. Wilhoit Water Company stipulates that it will service its customers with water
25 provided by the City of Prescott until December 31, 2007, or until Wilhoit Water Company
26 implements best available technology to achieve compliance with the arsenic MCL of 10 ppb,
27 whichever is sooner.

28 4. The Compliance Order shall be amended as follows:

1 A. Paragraph III(C), second sentence, shall be amended to read: "The proposal
2 must include a detailed compliance schedule of best available technology to be fully
3 implemented no later than December 31, 2007, a funding method to implement the best
4 available technology, and a proposal to supply alternates sources of drinking water to the
5 customers of the Water Supplier during the interim prior to implementation of the best
6 available technology.

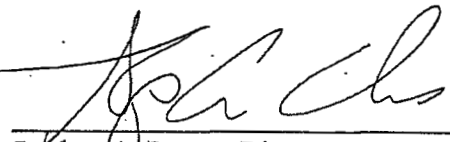
7 B. Paragraph III(D) shall be amended to read: No later than December 31, 2007,
8 the Water Supplier shall implement best available technology to achieve compliance with
9 the arsenic MCL of 10 ppb."

10 C. The Recitals shall be amended by inserting "time" after the word "reasonable"
11 on page 1, line 15, of the Compliance Order.

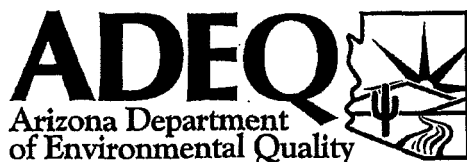
12 5. If Wilhoit Water Company fails to implement best available technology to
13 achieve compliance with the arsenic MCL of 10 ppb by December 31, 2007, Wilhoit Water
14 Company agrees to pay a stipulated penalty of \$500 per day as liquidated damages. The State
15 does not waive its right to assess penalties for prior violations, and the stipulated penalty shall
16 not preclude the State from taking any other enforcement action necessary to protect the public
17 health, or welfare or the environment for future violations.

18 In accordance with the above stipulations of the parties, **IT IS ORDERED** that the
19 above-entitled administrative appeal be dismissed.

20 Dated this 9th day of April 2007.

21
22
23 
24 Stephen A. Owens, Director
Arizona Department of Environmental Quality

25
26 ORIGINAL filed this 16th day of
27 April 2007, with:
28



Memorandum

Date: April 10, 2012

To: Dorothy Hains, Arizona Corporation Commission

From: Vivian Burns, Arizona Department of Environmental Quality, Case Manager Water Quality Enforcement Unit

Subject: Consent Order DW-55-08 – Wilhoit Water Co / Thunderbird Estates Public Water System #13-056

The Arizona Department of Environmental Quality (ADEQ) and Wilhoit Water Co – Thunderbird Estates (Wilhoit) PWS #13-056 entered into Consent Order DW-55-08 on July 1, 2008. The Order requires Wilhoit to install a new storage tank(s) to meet minimum storage requirements; submit a Contingency Plan of Action describing measures Wilhoit will implement in the event the water pressure falls below 20 psi; and drill a new well.

Consent Order Compliance Schedule:

- ADEQ issued Wilhoit an Approval of Construction (AOC) for a 65,000 gallon storage tank, which meets storage capacity, on July 12, 2011;
- ADEQ is waiting for Wilhoit to submit a Contingency Plan of Action; and
- ADEQ issued an Approval to Construction (ATC) on August 24, 2011 for the installation of the new well, but ADEQ has not received final paperwork to generate an AOC.



Memorandum

Date: April 10, 2012

To: Dorothy Hains, Arizona Corporation Commission

From: Vivian Burns, Arizona Department of Environmental Quality, Case Manager Water Quality Enforcement Unit

Subject: Consent Order DW-26-10 – Wilhoit Water Co / Blue Hills
Public Water System #13-055

The Arizona Department of Environmental Quality (ADEQ) and Wilhoit Water Co – Blue Hills (Wilhoit) PWS #13-055 entered into Consent Order DW-26-10 on April 2⁶/₈, 2010. The Order requires Wilhoit to install a treatment system using best available technology to achieve compliance with the arsenic maximum contaminant level (MCL) of 10 ppb. ADEQ issued an Approval of Construction to Wilhoit for an arsenic treatment system on October 4, 2011.

- Wilhoit has to complete four quarters of arsenic monitoring with an average below the arsenic MCL before ADEQ will close Consent Order DW-26-10. Anticipated closure date is January 1, 2013.



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • azdeq.gov



Henry R. Darwin
Director

APPROVAL OF CONSTRUCTION

Project Description:

Wilhoit Water Company-Blue Hills Arsenic Treatment Facility. AOC Permit for Relocation of 1-45 gpm Skid-Mounted Arsenic Treatment System Utilizing Severn-Trent Bayoxide E33 Absorption Media. To serve Wilhoit Water Company Blue Hills Customers. All Raw Water will be Treated. **NO BYPASSING/BLENDING OF RAW WATER.**

Location:

Dewey, AZ

Project Owner:

Wilhoit Water Company, c/o Mr. Jim West

Address:

365 E. Coronado Road, Suite 200, Phoenix, AZ 85004

The Arizona Department of Environmental Quality (ADEQ) hereby issues an Approval of Construction for the above-described facility based on the following provisions of Arizona Administrative Code (A.A.C.) R18-5-507 et seq.

On August 27, 2010, ADEQ issued a Certificate of Approval to Construct for the referenced project.

On September 15, 2011 Robert D. Upton, P.E., certified the following:

- A final construction inspection was conducted on September 7, 2011;
- The referenced project was constructed according to the as-built plans and specifications and ADEQ's Certificate of Approval to Construct;
- Water system pressure and leakage tests were conducted on August 17, 2011, and the results were within the allowable leakage rates;
- All New or Modified Components were disinfected according to an ADEQ-approved method; and
- The applicant has the right to appeal this AOC Permit. Appeal information is on reverse side of this Permit.

Microbiological samples were collected on August 11 & 12, 2011 and analyzed on August 12 & 13, 2011 by Bradshaw Mountain Environmental Laboratory, ADHS License No. AZ0029. The sample results were negative for total coliform.

This Approval of Construction authorizes the owner to begin operating the above-described facilities as represented in the approved plan on file with the ADEQ. Be advised that A.A.C. R18-5-124 requires the owner of a public water system to maintain and operate all water production, treatment and distribution facilities in accordance with ADEQ Safe Drinking Water Rules.

FMS

PWS No.: 13-055

LTF No.: 54827

Janak K. Desai
Janak K. Desai, P.E., Manager
Drinking Water Facilities Review Unit
Drinking Water Section

10/4/2011
Date Approved

c: TEU File No.: 20100161

CRO Approval of Construction File

Yavapai County Health Department

Yavapai County Planning & Zoning Department

AZ Corporation Commission

Engineer

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

Printed on recycled paper



**BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

CONSENT ORDER

Wilhoit Water Co., Inc., dba Wilhoit Water
Co., - Blue Hills, located in or near Dewey-
Humboldt, Yavapai County, Arizona 86327

Public Water System Number 13-055

Docket No. DW-26-10

To: Wilhoit Water Co., Inc., an Arizona Corporation, in its capacity as owners and operator
of Wilhoit Water Co., -Blue Hills (Wilhoit - Blue Hills), located in or near Dewey-Humboldt,
Yavapai County, Arizona 86327, Public Water System (PWS) #13-055.

RECITALS

Wilhoit - Blue Hills acknowledges that no promise of any kind or nature whatsoever was
made to induce it to enter into this Consent Order, and Wilhoit - Blue Hills has done so voluntarily.

Wilhoit - Blue Hills acknowledges that by entering into this Consent Order, it does not
resolve any liability it may have for civil penalties for violations of any State or Federal
environmental law.

By entering into this Consent Order, Wilhoit - Blue Hills does not admit to any civil or
criminal liability, or waive any right including but not limited to the assertion of any defense
available to Wilhoit - Blue Hills under applicable law. Further, Wilhoit - Blue Hills does not admit,
and both the Arizona Department of Environmental Quality (ADEQ) and Wilhoit - Blue Hills retain
the right to controvert in any subsequent proceeding except proceeding to implement or enforce this
Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent
Order.

Initials _____

1 The undersigned representative of Wilhoit - Blue Hills certifies that he is fully authorized to
2 execute the Consent Order on behalf of Wilhoit - Blue Hills and to legally bind Wilhoit - Blue Hills
3 to the Consent Order.

4 Wilhoit - Blue Hills admits to the jurisdiction of the Director of ADEQ. Except as to the right
5 to controvert the validity of any Findings of Fact or Conclusion of Law contained in this Consent
6 Order in a proceeding other than to enforce this Consent Order, Wilhoit - Blue Hills consents to the
7 terms and entry of this Consent Order and agrees not to contest the validity or terms of this Consent
8 Order in any subsequent proceeding.

9 **THEREFORE, IT IS HEREBY ORDERED** as follows:

10 **I. JURISDICTION**

11 The Director of ADEQ has jurisdiction over the subject matter of this action and is
12 authorized to issue this Consent Order pursuant to the Arizona Revised Statutes (A.R.S.) §§ 49-354
13 and 41-1092.07(F)(5).

14 **II. FINDINGS**

15 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**
16 **CONCLUSIONS OF LAW:**

17 **A. Findings of Fact**

18 1. Wilhoit Water Co., Inc., owns and/or operates Wilhoit - Blue Hills, PWS
19 #13-055, located in or near Dewey-Humboldt, Yavapai County, Arizona 86327.

20 2. Wilhoit - Blue Hills is a water system and serves a population
21 of approximately 125 with 55 water connections and a water distribution system. ADEQ has
22 assigned this water system Public Water System (PWS) #13-055.

23 3. Analytical results submitted by Wilhoit - Blue Hills to ADEQ for PWS #13-
24 055 from a sample taken at Entry Point to the Distribution System (EPDS) #001 on October 6, 2009
25

1 indicated an arsenic level of 0.017 mg/l, and a sample taken at EPDS #001 on January 12, 2010
2 indicated an arsenic level of 0.019 mg/l.

3 4. ADEQ does not have a record of a Public Notice being issued to Customers of
4 PWS #13-055 for exceeding the MCL for arsenic during July 2009 through March 2010.

5 B. Conclusions of Law

6 1. Wilhoit - Blue Hills is a public water system as defined in A.R.S. § 49-352(B)
7 and 40 C.F.R. § 141.2 (incorporated by reference at A.A.C. R18-4-103).

8 2. Wilhoit - Blue Hills is a community water system as defined in 40 C.F.R. §
9 141.2 (incorporated by reference at A.A.C. R18-4-103).

10 3. Wilhoit Water Co., Inc., as owner and operator of Wilhoit - Blue Hills is a
11 supplier of water as defined in 40 C.F.R. § 142.2 (incorporated by reference as A.A.C. R18-4-103).

12 4. The Maximum contaminant level (MCL) as defined in 40 CFR § 141.2
13 (incorporated by reference as A.A.C. R18-4-103) means the maximum permissible level of a
14 contaminant in water which is delivered to any user of a public water system. The MCL for arsenic
15 is 0.010 mg/l as established in 40 CFR § 141.62(b)(16) (incorporated by reference as A.A.C. R18-4-
16 109).

17 5. By distributing water in excess of the MCL for arsenic, Wilhoit - Blue Hills
18 violated 40 C.F.R. § 141.62(b) (incorporated by reference as A.A.C. R18-4-205).

19 6. By failing to issue a Public Notice to customers of PWS #13-055 for an arsenic
20 exceedance that occurred between July 2009 and March 2010, Wilhoit - Blue Hills violated 40
21 C.F.R. § 203 (incorporated by reference as A.A.C. R18-4-119).

22 III. COMPLIANCE SCHEDULE

23 **THE DIRECTOR HEREBY ORDERS** and Wilhoit - Blue Hills agrees to comply with the
24 provisions of this Consent Order as follows:
25

1 A. Within ten (10) calendar days of the effective date of this Order, Wilhoit - Blue Hills
2 shall issue a Public Notice describing the arsenic exceedance to customers of PWS #13-055 as
3 required by 40 C.F.R. § 141.203(b) (incorporated by reference at A.A.C. R18-4-119). Wilhoit - Blue
4 Hills shall issue repeat public notices as required by 40 C.F.R. § 203(b)(2) (incorporated by reference
5 at A.A.C. R18-4-119), and submit a copy of each repeat notice to ADEQ within ten (10) calendar
6 days after the notice is issued.

7 B. Within sixty (60) calendar days of the effective date of this Order, Wilhoit - Blue Hills
8 shall submit to ADEQ an administratively complete application for an Approval to Construct (ATC)
9 pursuant to A.A.C. R18-5-505 for a treatment system using best available technology (BAT) to
10 achieve compliance with the arsenic MCL in accordance with 40 C.F.R. § 142.62(b) (incorporated by
11 reference at A.A.C. R18-4-103). Wilhoit - Blue Hills shall respond to any deficiencies noted by
12 ADEQ within the time prescribed by ADEQ.

13 C. Within one-hundred-eighty (180) calendar days after ADEQ issues the ATC,
14 Wilhoit - Blue Hills shall complete construction of the approved treatment system and submit an
15 administratively complete application for an Approval of Construction (AOC) for the treatment
16 system described in Section III (B) of this Order.

17 D. Within five (5) calendar days of installing the treatment system described in
18 Section III(C) is installed; Wilhoit - Blue Hills will collect an initial sample, and then continue to
19 conduct quarterly monitoring for arsenic, and submit results to ADEQ within five (5) calendar
20 days of receiving results, pursuant to this Order until the arsenic sample results demonstrate that
21 the running annual average is below 0.010 mg/l, in accordance with 40 C.F.R. § 141.23(i)(1)
22 (incorporated by reference at A.A.C. R18-4-105).

23 **IV STATUS REPORTS**

24 A. Wilhoit - Blue Hills agrees to submit a written status report to ADEQ every sixty (60)
25 calendar days beginning sixty (60) days from the effective date of this Consent Order, until

1 termination of this Consent Order. Each written status report shall describe what measures have been
2 taken under Section III, of this Consent Order, and shall certify when compliance with the
3 requirements of Section III of this Order has been achieved. Each report shall be accompanied by
4 evidence of compliance including, as appropriate, submittal of documents, analytical results,
5 photographs or copies of any other supporting information that Wilhoit - Blue Hills deems necessary.

6 B. ADEQ will review the status reports and relay any disputes in writing to Wilhoit -
7 Blue Hills. Wilhoit - Blue Hills shall incorporate all required modifications, changes or other
8 alterations, as requested by ADEQ, within a reasonable time specified by ADEQ.

9 **V. VIOLATIONS OF ORDER/STIPULATED PENALTIES**

10 A. ADEQ and Wilhoit - Blue Hills agree that if Wilhoit - Blue Hills violates the terms
11 of this Consent Order or exceeds the MCL for arsenic, ADEQ in its sole discretion, but subject to
12 A.R.S. § 49-354, will have the option of either collecting stipulated civil administrative penalties
13 pursuant to this Section, or pursuing civil penalties.

14 B. Notwithstanding the foregoing, Wilhoit - Blue Hills shall be entitled to exercise the
15 right to respond to any claimed violation by ADEQ and provide evidence to ADEQ that it is in
16 compliance and that said violation does not exist. If ADEQ determines after reviewing such evidence
17 that there is no violation of applicable laws, no stipulated administrative penalties shall be collected.

18 C. If ADEQ elects to collect stipulated administrative penalties, Wilhoit - Blue Hills
19 agrees to pay a penalty of \$100.00 per day per violation, up to \$1,000.00 per violation.

20 D. Except as otherwise provided herein, stipulated penalties shall begin to accrue on the
21 day that performance is due or that a violation of this Consent Order occurs and shall continue to
22 accrue until correction of the act of noncompliance is completed. Neither issuance by ADEQ nor
23 receipt by Wilhoit - Blue Hills of a Notice of Violation of the terms and conditions of this Consent
24 Order are conditions precedent to the accrual of stipulated penalties.

25 E. The payment of stipulated penalties shall not relieve Wilhoit - Blue Hills from

1 compliance with the terms and conditions of this Consent Order or Federal or State laws, nor limit the
2 authority of the State to require compliance with the Consent Order or State law.

3 **VI. COMPLIANCE WITH OTHER LAWS**

4 A. This Consent Order does not encompass issues regarding releases, contamination,
5 sources, operations, facilities or a process not expressly covered by the terms of this Consent Order,
6 and is without prejudice to the rights of the State of Arizona or Wilhoit - Blue Hills, arising under
7 any federal or Arizona environmental statutes and rules with regard to such issues.

8 B. Nothing in this Consent Order shall constitute a permit of any kind, or a modification
9 of any permit of any kind, or an agreement to issue a permit of any kind under federal, state or local
10 law, or relieve Wilhoit - Blue Hills in any manner of its obligation to apply for, obtain, and comply
11 with all applicable permits. Nothing in this Consent Order shall in any way alter, modify or revoke
12 federal, state, or local law, or relieve Wilhoit - Blue Hills in any manner of its obligation to comply
13 with such laws. Compliance with the terms of this Consent Order shall not be a defense to any action
14 to enforce any such permits or laws.

15 **VII. FORCE MAJEURE**

16 A. Wilhoit - Blue Hills shall perform all the requirements of this Consent Order
17 according to the time limits set forth herein, unless performance is prevented or delayed by events
18 which constitute a *force majeure*. *Force majeure*, for the purposes of this Consent Order, is defined
19 as any event, arising from causes beyond the control of Wilhoit - Blue Hills or its authorized
20 representatives which delays or prevents the performance of any obligation under this Consent Order
21 and which could not have been overcome or prevented by Wilhoit - Blue Hills. The financial
22 inability of Wilhoit - Blue Hills to comply with the terms of this Consent Order shall not constitute a
23 *force majeure*.

24 B. In the event of a *force majeure*, the time for performance of the activity affected by the
25 *force majeure* shall be determined by ADEQ and extended for a period no longer than the delay

1 caused by the *force majeure*. The time for performance of any activity dependent on the delayed
2 activity shall be similarly extended. In the event of a *force majeure*, Wilhoit - Blue Hills shall notify
3 ADEQ in writing within five (5) calendar days after Wilhoit - Blue Hills or its agents become aware
4 of the occurrence. The written notice provided to ADEQ shall describe in detail the event, the
5 anticipated delay, the measures taken and to be taken by Wilhoit - Blue Hills to prevent or minimize
6 delay, and a proposed timetable under which those measures will be implemented. Wilhoit - Blue
7 Hills shall take all reasonable measures to prevent or minimize any delay caused by the *force*
8 *majeure*. Failure of Wilhoit - Blue Hills to comply with any requirements of this paragraph for a
9 particular event shall preclude Wilhoit - Blue Hills from asserting any claim of *force majeure* for that
10 event.

11 **VIII. SITE ACCESS**

12 ADEQ may at any time, upon presentation of credentials to authorized personnel on duty,
13 enter upon the premises at the Facility for the purpose of observing and monitoring compliance with
14 the provisions of this Consent Order. This right of entry shall be in addition to, and not in limitation
15 of or substitution for, ADEQ's rights under applicable law.

16 **IX. CORRESPONDENCE**

17 All documents, materials, plans, notices, or other items submitted as a result of this Consent
18 Order shall be transmitted to the addresses specified below:

19 To ADEQ:

20 Arizona Department of Environmental Quality
21 Water Quality Division
22 Attention: Vivian Burns, Case Manager
23 1110 West Washington Street, Mail Code 5415B-1
24 Phoenix, Arizona 85007-2935
25 Telephone: (602) 771-4608 Email: burns.vivian@azdeq.gov

To Wilhoit - Blue Hills:

David Conlin, President
Wilhoit Water Co., Inc.
P.O. Box 870
Clarkdale, Arizona 86324

1 Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

2 **X. RESERVATION OF RIGHTS**

3 A. This Consent Order is based solely upon currently available information. If additional
4 information is discovered, which indicates that the actions taken under this Consent Order are or will
5 be inadequate to protect human health, safety, or the environment, or to conform with applicable
6 federal or state laws, ADEQ shall have the right to require further action.

7 B. ADEQ shall have the right: to pursue civil penalties for violations of any and all
8 violations of A.R.S. Title 49, or the rules promulgated there under, occurring before entry of this
9 Consent Order; to disapprove of work performed by Wilhoit - Blue Hills that fails to comply with this
10 Consent Order; to take enforcement action for any and all violations of this Consent Order; and to
11 take enforcement action for any and all violations of A.R.S. Title 49, or the rules promulgated there
12 under, occurring after the entry of this Consent Order.

13 **XI. SEVERABILITY**

14 The provisions of this Consent Order are severable. If any provision of this Consent Order is
15 declared by a court of law to be invalid or unenforceable, all other provisions of this Consent Order
16 shall remain in full force and effect.

17 **XII. MODIFICATIONS**

18 Any modifications of this Consent Order shall be in writing and must be approved by both
19 Wilhoit - Blue Hills and ADEQ.

20 **XIII. EFFECTIVE DATE**

21 The effective date of this Consent Order shall be the date this Consent Order is signed by
22 ADEQ and Wilhoit - Blue Hills. If such signatures occur on different dates, the later date shall be the
23 effective date of this Consent Order.

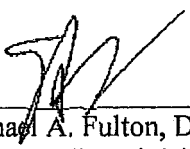
1 **XIV. PARTIES BOUND**

2 No change in ownership, corporate status, or partnership status relating to the subject of this
3 Consent Order will in any way alter the responsibilities of Wilhoit - Blue Hills under this Consent
4 Order. Wilhoit - Blue Hills will be responsible, and will remain responsible, for carrying out all
5 activities required under this Consent Order.

6 **XV. TERMINATION**

7 The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be
8 terminated upon receipt of written notification from ADEQ that Wilhoit - Blue Hills has
9 demonstrated, to the satisfaction of ADEQ, that all of the terms of this Consent Order have been
10 completed. Any denial of a request for termination from Wilhoit - Blue Hills will be in writing and
11 describe which terms of the Consent Order have not been completed to the satisfaction of ADEQ.
12 ADEQ reserves the right to terminate this Consent Order unilaterally at any time for any reason. Any
13 termination will include a written explanation of the reason(s) for termination.

14
15 ISSUED this 26th day of April, 2010.

16
17 
18 Michael A. Fulton, Director
19 Water Quality Division
20 Arizona Department of Environmental Quality
21
22
23
24
25

CONSENT TO ORDER

The undersigned, on behalf of Wilhoit - Blue Hills, hereby acknowledges that he has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that Wilhoit - Blue Hills will abide by the same and waive any right to appeal there from.

DATED this 13th day of April, 2010.

WILHOIT WATER CO., INC.

By: David Conlin
David Conlin, President

ORIGINAL of the foregoing Consent Order was sent certified mail, return receipt requested, this 28 day of April, 20 10, to:

David Conlin, President
Wilhoit Water Co., Inc.
P.O. Box 870
Clarkdale, Arizona 86324

Douglas G. Martin,
Statutory Agent, Wilhoit Water Co., Inc.
365 E. Coronado Rd., Suite #200
Phoenix, Arizona 85004

COPY of the foregoing Consent Order was filed this 28 day of April, 20 10, with:

Arizona Department of Environmental Quality
Office of Administrative Counsel
Attention: Judith Fought, Hearing Administrator
1110 West Washington Street
Phoenix, Arizona 85007-2935

COPIES of the foregoing Consent Order were sent by regular/interdepartmental mail, this 28 day of April, 20 10, to the following:

Marcia Colquitt, Manager Water Quality Compliance Section
Vivian Burns, Case Manager Water Quality Enforcement Unit
Vivian Adams, ADEQ Drinking Water Section
Sybil Smith, Manager Northern Regional Office

Yavapai County Community Health Services
Robert Resendes, Director
1090 Commerce Drive
Prescott, AZ 86305

Steve Olea
Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007-2996

Patrick Chan EES-WTR-6
USEPA Region IX
75 Hawthorne Street
San Francisco, CA 94105



BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

CONSENT ORDER

Wilhoit Water Company located along Hwy
89, Wilhoit, Yavapai County, Arizona.

Public Water System (PWS) #13-056

Docket No. DW-55-08

To: Wilhoit Water Company, Inc. as owner of Wilhoit Water Company, Thunderbird
Estates, Public Water System (PWS) #13-056 (Wilhoit) located at 8475 South Hwy 89, Wilhoit,
Arizona 86332, Yavapai County, Arizona.

RECITALS

Wilhoit acknowledges that no promise of any kind or nature whatsoever, was made to
induce it to enter into this Consent Order, and Wilhoit has done so voluntarily.

Wilhoit acknowledges that by entering into this Consent Order, it does not resolve any
liability it may have for civil penalties for violations of any State or Federal environmental law.

By entering into this Consent Order, Wilhoit does not admit to any civil or criminal
liability, or waive any right including but not limited to the assertion of any defense available to
Wilhoit under applicable law. Further, Wilhoit does not admit, and both the Arizona Department
of Environmental Quality ("ADEQ") and Wilhoit retain the right to controvert in any subsequent
proceeding except proceeding to implement or enforce this Consent Order, the validity of any
Findings of Fact or Conclusions of Law contained in this Consent Order.

The undersigned representative of Wilhoit certifies that he is fully authorized to execute
this Consent Order on behalf of Wilhoit and to legally bind Wilhoit to this Consent Order.

Wilhoit admits to the jurisdiction of the Director of ADEQ.

Initials 

1 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of
2 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order,
3 Wilhoit consents to the terms and entry of this Consent Order and agrees not to contest the
4 validity or terms of this Consent Order in any subsequent proceeding.

5 **THEREFORE, IT IS HEREBY ORDERED** as follows:

6 **I. JURISDICTION**

7 The Director of ADEQ has jurisdiction over the subject matter of this action and is
8 authorized to issue this Consent Order pursuant to the Arizona Revised Statutes (A.R.S.) § § 49-
9 354 and 41-1092.07(F)(5).

10 **II. FINDINGS**

11 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**
12 **CONCLUSIONS OF LAW:**

13 A. **Findings of Fact**

14 1. Wilhoit owns Wilhoit Water Company, Thunderbird Estates Public Water System
15 (PWS) #13-056 located at Hwy 89, Wilhoit, Yavapai County, Arizona. PWS #13-056 serves
16 approximately 150 persons.

17 2. On September 16, 2006 ADEQ inspected the PWS and observed that Wilhoit had
18 used shotcrete to repair three badly corroded water storage tanks.

19 3. ADEQ issued a Notice of Opportunity to Correct (NOC) requesting that Wilhoit
20 submit documentation showing the material used to line the storage tanks is National Sanitary
21 Foundation (NSF) 61 certified. Wilhoit did not submit any such supporting documents.

22 4. On February 21, 2007, because Wilhoit had not responded to the NOC, ADEQ
23 issued to a Notice of Violation (NOV), which Wilhoit received on February 27, 2007. The NOV
24 again requested that Wilhoit submit proof of NSF 61 certification for the material used to line the
25 storage tanks. Wilhoit did not submit any such supporting documents.

1 5. During a June 19, 2007 telephone discussion, Mr. Jim West, Wilhoit's
2 Representative, informed ADEQ that:

3 a. During May 2007 Wilhoit submitted a rate increase application to the
4 Arizona Corporation Commission (ACC);

5 b. Wilhoit will examine the prospects of connecting to the nearby Walden
6 Meadows Community Cooperative PWS from which Wilhoit currently purchases 400,000
7 gallons of drinking water per month.

8 c. Wilhoit had completed construction of a fourth well (Well #4) during the
9 summer of 2006, without ADEQ's approval, but had begun preparing the appropriate documents
10 to obtain the required approval.

11 Conclusions of Law

12 1. By lining the internal walls of three water storage tanks with shotcrete, a material
13 that does not conform to ANSI/NSF Standard 61, Wilhoit violated A.A.C. R18-4-119(B), which
14 requires that a material or product that comes into contact with drinking water conforms to
15 ANSI/NSF Standard 61.

16 2. By maintaining the water storage tanks in a state of disrepair, Wilhoit violated
17 A.A.C. R18-4-124, which requires that a water supplier maintain and keep in proper operating
18 condition all facilities used in production, treatment, and distribution of the water supply.

19 3. By constructing Well #4 prior to obtaining ADEQ's approval, Wilhoit violated
20 A.A.C. R18-5-505(B), which requires that a person obtain an Approval to Construct (ATC) from
21 the Department prior to modifying an existing facility, or make an alteration that will affect the
22 treatment, capacity, water quality, flow, distribution, or operational performance of a public
23 water system.

1 4. By operating Well #4 prior to obtaining ADEQ's approval, Wilhoit violated
2 A.A.C. R18-5-507(a), which prohibits a person from operating a newly constructed facility until
3 an Approval of Construction (AOC) is issued by the Department.

4 **III. COMPLIANCE SCHEDULE**

5 **THE DIRECTOR HEREBY ORDERS** and Wilhoit agrees to comply with the provisions of
6 this Consent Order as follows:

7 1. Within sixty (60) days of the effective date of this Consent Order, Wilhoit shall
8 contract with a professional engineer registered in Arizona to replace the three (3) storage tanks
9 described above. Wilhoit shall notify ADEQ in writing that this task has been completed.

10 2. Within sixty (60) days of contracting with a professional engineer, Wilhoit shall
11 complete final engineering designs for the new water storage facility (WSF). Wilhoit shall
12 ensure that the WSF is designed to meet the minimum storage requirements at A.A.C. R18-5-
13 503. Wilhoit shall also notify ADEQ in writing that this task has been completed.

14 3. Within thirty (30) days of completing the final WSF engineering designs, Wilhoit
15 shall submit to ADEQ an administratively complete application for an ATC for the WSF.
16 Wilhoit shall respond to any deficiency in its ATC application identified by ADEQ, within the
17 deadline provided by ADEQ.

18 4. Within sixty (60) days of receipt of an ATC from ADEQ, Wilhoit shall complete
19 construction and/or installation of the WSF, and notify ADEQ in writing that this task has been
20 completed.

21 5. Within thirty (30) days of completing the construction and/or installation of the
22 WSF, Wilhoit shall submit to ADEQ an administratively complete application for an AOC for
23 the WSF. Wilhoit shall respond to any deficiency in its AOC application identified by ADEQ,
24 within the deadline provided by ADEQ.

25

1 6. Wilhoit shall begin operation of the WSF only after receipt of an AOC from
2 ADEQ.

3 7. Within thirty (30) days of the effective date of this Consent Order, Wilhoit shall
4 submit to ADEQ a Contingency Plan of Action describing the measures (including supplying
5 bottled water) Wilhoit will implement in the event that activities pertaining to the replacement of
6 the three (3) storage tanks with the WSF, or any other activity, result in low pressure i.e., below
7 20 psi, or no pressure in the distribution system. At a minimum, these measures must include a
8 scenario describing when bottled water will be provided.

9 8. Within forty five (45) days of the effective date of this Consent Order, Wilhoit
10 shall submit to ADEQ administratively complete applications for an ATC and AOC for Well #4
11 that includes source water testing, and address any deficiency in the applications identified by
12 ADEQ within the deadline provided by ADEQ.

13 **IV. STATUS REPORTS**

14 A. Wilhoit agrees to submit a written status report to ADEQ every sixty (60)
15 calendar days from the effective date of this Consent Order, until termination of this Consent
16 Order. Each written status report shall describe what measures have been taken under Section
17 III, of this Consent Order, and shall certify when compliance with the requirements of Section III
18 of this Order has been achieved. Each report shall be accompanied by evidence of compliance
19 including, as appropriate, submittal of documents, photographs or copies of any other supporting
20 information that Wilhoit deems necessary.

21 B. ADEQ will review the status reports and relay any disputes in writing to Wilhoit.
22 Wilhoit shall incorporate all required modifications, changes or other alterations, as requested by
23 ADEQ, within a reasonable time specified by ADEQ.

1 **V. VIOLATIONS OF ORDER/STIPULATED PENALTIES**

2 A. ADEQ and Wilhoit agree that if Wilhoit commits civil violations of A.R.S. § 49
3 Chapter 2, Article 9 or rules adopted there under related to the construction, operation, or major
4 modification of any source, or fails to provide the minimum storage capacity after the applicable
5 compliance dates provided at Section III of this Consent Order, ADEQ in its sole discretion, but
6 subject to Article 9, shall have the option of either collecting stipulated penalties pursuant to this
7 section or pursuing statutory penalties.

8 B. Notwithstanding the foregoing, Wilhoit shall be entitled to exercise the right to
9 respond to any claimed violation by ADEQ and provide evidence to ADEQ that it is in
10 compliance and that said violation does not exist. If ADEQ determines after reviewing such
11 evidence that there is no violation of applicable laws, no stipulated penalties shall be collected.

12 C. If ADEQ elects to collect stipulated penalties, Wilhoit agrees to pay a penalty of
13 one hundred dollars (\$100) per day per violation, up to one thousand dollars per violation.

14 D. Except as otherwise provided herein, stipulated penalties shall begin to accrue on
15 the day that performance is due or that a violation of the applicable law occurs and shall continue
16 to accrue until correction of the act of noncompliance is completed. Neither issuance by ADEQ
17 nor receipt by Wilhoit of a Notice of Violation of the terms and conditions of this Consent Order
18 are conditions precedent to the accrual of stipulated penalties.

19 E. The stipulated penalties required by this Consent Order shall be in addition to
20 other remedies or sanctions available to ADEQ by reason of any failure by Wilhoit to comply
21 with the requirements of Federal or State laws. The payment of stipulated penalties shall not
22 relieve Wilhoit from compliance with the terms and conditions of this Consent Order or Federal
23 or State laws, nor limit the authority of the State to require compliance with the Consent Order or
24 State law.

1 F. All payments made to the State under this Consent Order shall be by check made
2 payable to "State of Arizona" and shall be delivered or mailed to:

3 Arizona Department of Environmental Quality
4 Attention: Accounts Receivable
5 PO Box 18228
6 Phoenix, Arizona 85005-8228

7 together with a letter tendering the check. The letter shall identify this Consent Order by the
8 parties and docket number. A copy of the check shall also be sent to ADEQ pursuant to Section
9 IX.

10 VI. COMPLIANCE WITH OTHER LAWS

11 A. This Consent Order does not encompass issues regarding releases, contamination,
12 sources, operations, facilities or a process not expressly covered by the terms of this Consent
13 Order, and is without prejudice to the rights of the State of Arizona or Wilhoit, arising under any
14 federal or Arizona environmental statutes and rules with regard to such issues.

15 B. Nothing in this Consent Order shall constitute a permit of any kind, or a
16 modification of any permit of any kind, or an agreement to issue a permit of any kind under
17 federal, state or local law, or relieve Wilhoit in any manner of its obligation to apply for, obtain,
18 and comply with all applicable permits. Nothing in this Consent Order shall in any way alter,
19 modify or revoke federal, state, or local law, or relieve Wilhoit in any manner of its obligation to
20 comply with such laws. Compliance with the terms of this Consent Order shall not be a defense
21 to any action to enforce any such permits or laws.

22 VII. FORCE MAJEURE

23 A. Wilhoit shall perform all the requirements of this Consent Order according to the
24 time limits set forth herein, unless performance is prevented or delayed by events which
25 constitute a *force majeure*. *Force majeure*, for the purposes of this Consent Order, is defined as
any event, arising from causes beyond the control of Wilhoit or its authorized representatives

1 which delays or prevents the performance of any obligation under this Consent Order and which
2 could not have been overcome or prevented by Wilhoit. The financial inability of Wilhoit to
3 comply with the terms of this Consent Order shall not constitute a *force majeure*.

4 B. In the event of a *force majeure*, the time for performance of the activity affected
5 by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the
6 delay caused by the *force majeure*. The time for performance of any activity dependent on the
7 delayed activity shall be similarly extended. In the event of a *force majeure*, Wilhoit shall notify
8 ADEQ in writing within five (5) calendar days after Wilhoit or its agents become aware of the
9 occurrence. The written notice provided to ADEQ shall describe in detail the event, the
10 anticipated delay, the measures taken and to be taken by Wilhoit to prevent or minimize delay,
11 and a proposed timetable under which those measures will be implemented. Wilhoit shall take
12 all reasonable measures to prevent or minimize any delay caused by the *force majeure*. Failure
13 of Wilhoit to comply with any requirements of this paragraph for a particular event shall
14 preclude Wilhoit from asserting any claim of *force majeure* for that event.

15 VIII. SITE ACCESS

16 ADEQ may at any time, upon presentation of credentials to authorized personnel on duty,
17 enter upon the premises at the Facility for the purpose of observing and monitoring compliance
18 with the provisions of this Consent Order. This right of entry shall be in addition to, and not in
19 limitation of or substitution for, ADEQ's rights under applicable law.

20 IX. CORRESPONDENCE

21 All documents, materials, plans, notices, or other items submitted as a result of this
22 Consent Order shall be transmitted to the addresses specified below:

23 To ADEQ:

24 Arizona Department of Environmental Quality
25 Water Quality Division
Attention: Robert Casey, Manager
Water Quality Enforcement Unit

1 1110 West Washington Street
2 Phoenix, Arizona 85007-2935
3 Telephone: (602) 771-4614
4 Email: rc2@azdeq.gov

5 To Wilhoit:

6 Wilhoit Water Company
7 Attention: David A. Conlin Jr, President
8 PO Box 870
9 901 1 ST SO ST
10 Clarkdale, AZ 86324

11 Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

12 **X. RESERVATION OF RIGHTS**

13 A. This Consent Order is based solely upon currently available information. If
14 additional information is discovered, which indicates that the actions taken under this Consent
15 Order are or will be inadequate to protect human health, safety, or the environment, or to
16 conform with applicable federal or state laws, ADEQ shall have the right to require further
17 action.

18 B. ADEQ shall have the right: to disapprove of work performed by Wilhoit that fails
19 to comply with this Consent Order; to take enforcement action for any and all violations of this
20 Consent Order; and to take enforcement action for any and all violations of A.R.S. Title 49, or
21 the rules promulgated thereunder, occurring after the entry of this Consent Order.

22 C. With respect to the terms and conditions of this Consent Order, Wilhoit waives all
23 rights to the informal appeals process as described in A.R.S. § 49-1091, including an informal
24 appeal of an approval, disapproval, or evaluation within the discretion of ADEQ.

25 **XI. SEVERABILITY**

The provisions of this Consent Order are severable. If any provision of this Consent
Order is declared by a court of law to be invalid or unenforceable, all other provisions of this
Consent Order shall remain in full force and effect.

1 **XII. MODIFICATIONS**

2 Any modifications of this Consent Order shall be in writing and must be approved by
3 both Wilhoit and ADEQ.

4 **XIII. EFFECTIVE DATE**

5 The effective date of this Consent Order shall be the date this Consent Order is signed by
6 ADEQ and Wilhoit. If such signatures occur on different dates, the later date shall be the
7 effective date of this Consent Order.

8 **XIV. PARTIES BOUND**

9 No change in ownership, corporate status, or partnership status relating to the subject of
10 this Consent Order will in any way alter the responsibilities of Wilhoit under this Consent Order.
11 Wilhoit will be responsible, and will remain responsible, for carrying out all activities required
12 under this Consent Order.

1 **XV. TERMINATION**

2 The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be
3 terminated upon receipt of written notification from ADEQ that Wilhoit has demonstrated, to the
4 satisfaction of ADEQ, that all of the terms of this Consent Order have been completed. Any
5 denial of a request for termination from Wilhoit will be in writing and describe which terms of
6 the Consent Order have not been completed to the satisfaction of ADEQ. ADEQ reserves the
7 right to terminate this Consent Order unilaterally at any time for any reason. Any termination
8 will include a written explanation of the reason(s) for termination.

9 ISSUED this 1st day of July, 2008.

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11 *Joan Card, Deputy Director*
12 *Joan Card*, Director
13 Water Quality Division
14 Arizona Department of Environmental Quality
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CONSENT TO ORDER

The undersigned, on behalf of Wilhoit, hereby acknowledges that he has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that Wilhoit will abide by the same and waive any right to appeal therefrom.

DATED this 16 day of June, 2008.

A handwritten signature in cursive script, appearing to read "David A. Conlin Jr.", written over a horizontal line.

David A. Conlin Jr, President
Wilhoit Water Company, Inc.

ORIGINAL of the foregoing Consent Order was sent certified mail, return receipt requested,

this 10 day of July, 2008 to:

Wilhoit Water Company, Inc.
Attention: David A. Conlin, Jr
PO Box 870
901 1 ST SO ST
Clarkdale, AZ 86324

COPY of the foregoing Consent Order was filed this 10 day of July, 2008 with:

Arizona Department of Environmental Quality
Office of Special Counsel
Attention: Judith fought, Hearing Administrator
1110 West Washington Street
Phoenix, Arizona 85007-2935

COPIES of the foregoing Consent Order were sent by regular/interdepartmental mail, this 10 day of July, 2008, to the following:

Cynthia Campbell, Manager, WQCS, ADEQ
Matt Capalby, Director, NRO, ADEQ
Robert Casey, ADEQ Manager Water Quality Enforcement Unit
Jim Jones, NRO

Ken Spedding, P.E., Director
Yavapai County Health Department
500 S. Marina
Prescott, AZ 86301

Arizona Corporation Commission
Utilities Division
Attention: Steve Olea, Assistant Director
1200 W. Washington St.
Phoenix, AZ 95007

